

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-219-E - ORDER NO. 2007-298

MAY 3, 2007

IN RE: Petition of Progress Energy Carolinas, Inc. to Terminate Service) ORDER DENYING) MOTION TO CONTINUE) AND DISMISSING) COUNTERCLAIMS
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This matter comes before the Public Service Commission of South Carolina (Commission) pursuant to the Motion to Continue Date of Hearing and Extension of Time for Filing of Pleadings (Motion to Continue) filed by Mrs. Beatrice Weaver (Respondent or Weaver) and the Motion to Close Docket filed by Progress Energy Carolinas, Inc. (PEC).

The above-referenced docket was established by the Commission on August 5, 2004, in response to PEC's Petition to Terminate Service to Mrs. Weaver's property at 1253 Harllees Bridge Road, Little Rock, South Carolina. Mrs. Weaver's current Motion to Continue represents her fifth request to delay the hearing in this docket.

On September 29, 2004, in response to Mrs. Weaver's request for a formal hearing on PEC's Petition to Terminate Service, the Commission issued its order setting a hearing date of December 9, 2004. On November 24, 2004, Mrs. Weaver moved for a three-month continuance of the hearing on the basis of her medical condition. The

Commission, by its order dated December 3, 2004, granted her motion and scheduled the hearing for March 10, 2005.

Prior to the scheduled hearing date of March 10, 2005, in a motion received February 14, 2005, Mrs. Weaver again moved the Commission for a continuance based upon medical reasons. The Commission issued its order on March 14, 2005 granting a continuance. Thereafter, on September 12, 2005, the Commission received a letter from Mrs. Weaver advising that her medical condition would preclude her participation in a hearing until mid-November 2005, at the earliest. To accommodate Mrs. Weaver's needs, the Commission again rescheduled the hearing, setting it for December 14, 2005.

PEC requested withdrawal of its petition to terminate service on or about October 17, 2005. However, in a letter dated November 17, 2005, Mrs. Weaver informed the Commission that she intended to continue prosecuting her counterclaims against PEC, and requested further that the matter be again continued. Subsequently, in a letter dated November 25, 2005, Mrs. Weaver asked the Commission to order PEC to reconnect service to her house in her name without requiring payment of the outstanding debt. PEC opposed the request, and on December 16, 2005, the Commission issued its Order Ruling on Various Requests and Establishing Hearing. In the order, the Commission scheduled all contested matters, including Mrs. Weaver's claim of entitlement to reconnection of service, to be heard on January 12, 2006. The Commission's order further sought to accommodate Mrs. Weaver's medical needs by offering to provide her with a video conference hook-up to relieve her from the necessity of traveling to Columbia to attend

and participate at the hearing in person. Mrs. Weaver ignored the Commission's offer of videoconferencing.

On January 10, 2006, Mrs. Weaver again requested that the hearing be postponed, and the Commission again accommodated her request by rescheduling the matter for April 13, 2006.

On February 8, 2006, Mrs. Weaver again moved for a continuance, citing without specificity the anticipated absence of unnamed material witnesses for observances of Passover and/or Easter. In an order entered February 27, 2006, the Commission denied Mrs. Weaver's motion for a continuance of the April 13, 2006 hearing. Mrs. Weaver renewed her motion for continuance through several filings thereafter, this time raising medical grounds for her request. In her March 10, 2006 Memorandum in Support of Motion to Continue Date of Hearing, Mrs. Weaver revealed that, within days of filing her February 8, 2006 motion for continuance, and with full knowledge that her hearing was scheduled for April 13, 2006, she elected to have surgery on April 12, 2006, thereby making it impossible for her to attend the April 13 hearing or to comply with any other hearing date scheduled until after the end of May.¹

The Commission is empowered with broad discretion, pursuant to S.C. Code Ann. Regs. 103-862, to grant or deny requests for continuances. The Commission has demonstrated its ample willingness to accommodate the needs of Mrs. Weaver by granting four previous requests for continuances over a sixteen-month period. The

¹ Subsequently, in a letter dated August 7, 2006 and received in the Commission's offices on or about August 17, 2006, Weaver again advised the Commission that her medical condition precluded her from participating in any proceeding "until further notice" and requested that the Commission "continue the proceedings indefinitely until [her] medical condition permits [her] to attend the hearing."

Commission has further offered to facilitate Mrs. Weaver's claimed travel-related difficulties by allowing her to participate by videoconference at no additional expense to her.

For the duration of the pendency of this docket, Mrs. Weaver's actions have made it apparent that she is personally either unwilling or unable to litigate this matter to its conclusion. For example, in her January 6, 2006 correspondence filed with the Commission, Mrs. Weaver asserts that necessary documents and notices involving this case were received in the mail but withheld from her by her staff, purportedly due to her continuing illness. And as detailed previously, Mrs. Weaver has repeatedly found it necessary to seek continuances due to her medical condition. Not having access to necessary notices in the case, no matter what the reason, creates obvious problems in prosecuting the case, since Mrs. Weaver has been proceeding *pro se* and therefore has no one else to answer for her in case of incapacity due to illness.

The Commission makes every reasonable effort to accommodate the needs of all litigants, and is particularly sensitive to the needs of those appearing *pro se*. It is not obligated, however, to continue these proceedings simply because a litigant makes a request that it do so. A contrary ruling would empower a litigant to impose a continuance upon the Commission unilaterally. Whether to grant a request for continuance is squarely within the discretion of the Commission. 26 S.C. Code Ann. Regs. 103-862. Consistent with the discretion afforded the Commission by the Regulations, the Commission therefore denies Mrs. Weaver's now fifth request for continuance.

While the Commission is always sensitive to the needs of individual litigants, Mrs. Weaver's own filings to date indicate that she is unable to participate in a hearing now or in the foreseeable future. The Commission has further been made aware that Mrs. Weaver has likewise repeatedly demanded and received continuances of PEC's ongoing civil suit against her and her husband Gary Weaver in the Dillon County Court of Common Pleas, Fourth Judicial Circuit (Case No. 2004-CP-17-232), in which PEC seeks recovery of alleged unpaid electric bills, and that the civil case has, like this matter, languished on the docket for an extended period of time.

This matter has now been pending at the Commission for almost three years, having been commenced in August 2004. It has not been adjudicated because Mrs. Weaver cannot or will not appear for a scheduled hearing. Viewed in the light most favorable to Mrs. Weaver, it can fairly be said that she is, by her own representations to this Commission, physically unable to prosecute her counterclaims. Accordingly, the Commission now dismisses Mrs. Weaver's counterclaims without prejudice for lack of prosecution. Because PEC had previously withdrawn its petition and the Commission has now dismissed Mrs. Weaver's counterclaims, PEC's motion to close the docket is now moot.

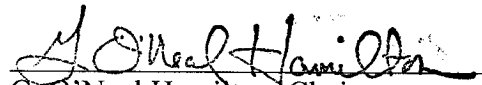
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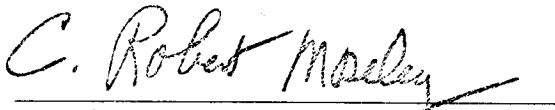
CONCLUSION

The motion of Mrs. Beatrice Weaver to continue the April 13, 2006 hearing in Docket No. 2004-219-E is denied. PEC's Motion to Close Docket is dismissed as moot. Pursuant to the Commission's discretionary authority, this matter is dismissed without prejudice.

BY ORDER OF THE COMMISSION:


G. O'Neal Hamilton, Chairman

ATTEST:


C. Robert Moseley, Vice Chairman

(SEAL)